

## Insurance Banking & Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**Commissioner of Taxation v News Australia Holdings Pty Ltd** - Pt IVA *Income Tax Assessment Act 1936* (Cth) - whether corporate restructure was a scheme entered into for purpose of obtaining a tax benefit - appeal dismissed (B)

**Dean v Australian Postal Corporation** - *Safety, Rehabilitation & Compensation Act 1988-2007* (Cth) - workers compensation - Commonwealth employees - psychological disorder - whether ailment was "contributed to in a material degree by the employee's employment" - appeal dismissed (I)

**Goodman, in the matter of Glenhurst Corporation Pty Ltd (in liq)** - s33V *Federal Court of Australia Act 1976* - class action arising out of Westpoint collapse - proposed settlement approved (I, B, C)

**Hinterland Marine Pty Ltd v Maritime Global Pty Ltd** - s3 *Franchising Code of Conduct* (Cth) - meaning of "motor vehicle" - marine craft supplied (I)

**The Owners Strata Plan 62930 v Kell & Rigby Holdings Pty** - *Home Building Act 1989* (NSW) - s18B statutory warranties - limitation of actions - apportionment of liability as between developers & builder (I, C)

**Lipman Pty Ltd v Emergency Services Superannuation Board** - *Building and Construction Industry Security of Payment Act 1999* (NSW) - alternative dispute resolution provision in a building contract (C)

**Norco Co-Operative Ltd v Kelly** - Equitable charge - misappropriated funds (B)

**Martin v Martin** - Succession - testator bequeathed farm to plaintiff - *Water Act 1912* (NSW) & *Water Management Act 2000* (NSW) - "occupier" (I, B, C)

**In the Estate of Phyllis May Engelhardt dec'd** - Application for an order admitting photocopy of deceased's Will & original codicil to probate (B)

**Woodham v Roberts Ltd** - Torts - contracts - application for summary judgment - plaintiff suing defendant for damages alleging breach of an agreement not to pursue theft allegations & for damages for malicious prosecution (I)

**Peterson v South Eastern Sydney Illawarra Area Health Service & Elliott** - Medical negligence - duty of care - causation - whether unreasonable delay in arranging further orthopaedic surgery for non-union or delayed union of fracture - judgment for defendants (I)

**McDonald et al. v City of Chicago, Illinois, et al, No. 08-1521** - decision from United States of America - constitutional law - Second Amendment: right to bear arms - Fourteenth Amendment - handguns - Second Amendment applies to Chicago's ordinance (I, B, C)

## Summaries with links (5 minute read)

Friday 2 July 2010

**Commissioner of Taxation v News Australia Holdings Pty Ltd [2010] FCAFC 78**

Full Court of the Federal Court of Australia

Stone, Jessup & Jagot JJ (in Sydney)

Pt IVA *Income Tax Assessment Act* 1936 (Cth) - appeal from decision of the Administrative Appeals Tribunal - whether corporate restructure was a scheme entered into for purpose of obtaining a tax benefit - appeal dismissed.

[Commissioner of Taxation](#) (B)

**Dean v Australian Postal Corporation [2010] FCA 680**

Federal Court of Australia

Perram J (in Sydney)

*Safety, Rehabilitation & Compensation Act* 1988-2007 (Cth) - workers compensation - Commonwealth employees - appeal from Administrative Appeals Tribunal which had concluded ailment had not been materially contributed to by his employment - psychological disorder - employee's perception of bullying by manager - whether ailment was "contributed to in a material degree by the employee's employment" - perception does not have to be founded on reasonable grounds - evidence must support causative link of the perception as a material contributor to the development or aggravation of the ailment - appeal dismissed.

[Dean](#) (I)

**Goodman, in the matter of Glenhurst Corporation Pty Ltd (in liq) [2010] FCA 667**

Federal Court of Australia

Gordon J (in Melbourne)

s33V *Federal Court of Australia Act* 1976 - class action arising out of Westpoint collapse - claim was for losses suffered by clients of respondent who had invested in products issued by entities associated with Westpoint - proposed settlement approved.

[Goodman, in the matter of Glenhurst Corporation](#) (I, B, C)

**Hinterland Marine Pty Ltd v Maritime Global Pty Ltd [2010] FCA 683**

Federal Court of Australia

Logan J (in Brisbane)

s3 *Franchising Code of Conduct* (Cth) - meaning of "motor vehicle" - determination of separate question - marine craft supplied were "motor vehicles" as defined & dealership agreement was to be taken to be a franchise agreement for the purposes of the Code of Conduct.

[Hinterland Marine](#) (I)

**The Owners Strata Plan 62930 v Kell & Rigby Holdings Pty Ltd [2010] NSWSC 612**

Supreme Court of New South Wales

Ward J

*Home Building Act* 1989 (NSW) - construction of residential unit complex in Kirribilli - s18B statutory warranties - limitation of actions - apportionment of liability as between developers & builder - damages - owners corporation claim against developers & builder - various breaches of statutory warranty established - breaches causative of loss - reasonableness of rectification sought - developer's claim for equitable contribution was not statute barred - comprehensive review of legislation, text & United Kingdom, Australian & New Zealand case law.

[The Owners Strata Plan 62930](#) (I, C)

**Lipman Pty Ltd v Emergency Services Superannuation Board [2010] NSWSC 710**

Supreme Court of New South Wales

Hammerschlag J

*Building and Construction Industry Security of Payment Act* 1999 (NSW) - construction & operation of an alternative dispute resolution provision in a building contract under which plaintiff as principal retained defendant as contractor to undertake building work associated with redevelopment of shopping centre at Fairfield - expert determination final & binding - proceedings dismissed.

[Lipman](#) (C)

**Norco Co-Operative Ltd v Kelly [2010] NSWSC 719**

Supreme Court of New South Wales

Lindgren AJ

Equitable charge - misappropriated funds plus interest - monies misappropriated by first defendant from plaintiff applied in reduction of mortgage over properties of first & second

defendants - title to each property transferred without consideration by both defendants to second defendant - second defendant not a purchaser for value & without notice - title subject to charge in favour of plaintiff.

[Norco Co-Operative](#) (B)

**Martin v Martin [2010] NSWSC 700**

Supreme Court of New South Wales

White J

Succession - testator bequeathed farm to plaintiff - whether bequest included water licence - construction of statutory entitlements of testator & plaintiff under *Water Act 1912* (NSW) & *Water Management Act 2000* (NSW) - meaning of "occupier" - matter stood down for Minister for Water to be served.

[Martin](#) (I, B, C)

**In the Estate of Phyllis May Engelhardt deceased [2010] SASC 196**

Supreme Court of South Australia

Sulan J

Application for an order admitting photocopy of deceased's Will & original codicil to probate - original Will lost or misplaced - presumption of revocation of lost Will applies - application allowed - presumption of revocation rebutted - photocopy Will and original codicil admitted to probate.

[In the Estate of Phyllis May Engelhardt deceased](#) (B)

**Woodham v Roberts Ltd [2010] TASSC 31**

Supreme Court of Tasmania

Holt AsJ

Torts - contracts - plaintiff suing defendant for damages alleging breach of an agreement not to pursue theft allegations & for damages for malicious prosecution - defendant seeking summary dismissal of action or failing that, an order striking out statement of claim - defendant's application dismissed - an interesting review of United Kingdom & Australian cases on the question of whether a contract void & unenforceable as being contrary to public policy.

[Woodham](#) (I)

## In the District Court of New South Wales...

### **Peterson v South Eastern Sydney Illawarra Area Health Service & Elliott [2010] NSWDC 114**

District Court of New South Wales

Levy SC DCJ

Medical negligence - duty of care - causation - orthopaedic out-patient management of complex Type 3 Pilon tibial fracture following initial operative repair - whether unreasonable delay in arranging further orthopaedic surgery for non-union or delayed union of fracture - whether breach of duty of care by hospital - whether breach of duty of care by consultant visiting medical officer - whether defendants proved cigarette smoking by plaintiff constituted contributory negligence": answer 'no' - whether legal test for causation of harm satisfied - considerations of *Civil Liability Act 2002*, s5O, s5E - judgment for defendants but damages assessment made.

[Peterson](#) (I)

## From the United States of America...

### **McDonald et al. v City of Chicago, Illinois, et al, No. 08-1521**

Supreme Court of the United States

Roberts CJ; Stevens, Scalia, Kennedy, Thomas, Breyer, Ginsburg, Alito, Sotomayor JJ

Constitutional law - Second Amendment: right to bear arms - Fourteenth Amendment, provides, among other things, that a State may not abridge "the privileges or immunities of citizens of the United States" or deprive "any person of life, liberty, or property, without due process of law" - petitioners were residents seeking to keep handguns in their homes for self-defence but prohibited from doing so by Chicago's firearms laws - in the United States District Court for the Northern District of Illinois they had sought a declaration that the handgun ban & several related Chicago ordinances violated the Second and Fourteenth Amendments to the United States Constitution - their argument that the ordinances were unconstitutional had been rejected by District Court - the Court of Appeal affirmed the District Court decision - a Supreme Court majority held that the Second Amendment applies to Chicago's ordinance, that it is applicable to all levels of government, state and federal, not just federal as had been previously maintained.

[McDonald](#) (I, B, C)

[Heller](#) - *District of Columbia v Heller*, 07-290 - decision 26 June 2008 Supreme Court of the United States: see 'Benchmark' Friday 4 July 2008 - Scalia J delivered the opinion of the court, in which Roberts CJ & Kennedy, Thomas, & Alito JJ joined. Stevens J filed a dissenting opinion, in which Souter, Ginsburg & Breyer JJ joined - Breyer J filed a dissenting opinion in which Stevens, Souter & Ginsburg JJ joined: Second Amendment - whether right to keep & bear arms is a right of individuals or a collective right that applies only to state-regulated militias - the Constitution was



written to be understood by the voters, ordinary citizens in the founding generation - held 5:4, an individual right, (but the Second Amendment right is not an unlimited right.)

## And for Sunday 4 July 2010 An Atlantic Counterpart - Julia of the Flaming Locks

### Julia Ward Howe

(b. 27 May 1819, New York City - 17 October, 1910, Rhode Island)

American abolitionist, social activist, & poet most famous as the author of "The Battle Hymn of the Republic." Set to William Steffe's already-existing music, it was first published in the 'Atlantic Monthly' in February 1862. In 1917, her daughters Laura E. Richards, Maud Howe Elliott & Florence Hall received the first Pulitzer prize for a biography, "*The Life of Julia Ward Howe*" - Chapter II, entitled 'Little Julia Ward,' contains the following passage: "*Julia was a beautiful child, but she had red hair, which was then considered a sad drawback. She could remember visitors condoling with her mother on this misfortune, and the gentle lady deploring it also, & striving by the use of washes and leaden combs to darken the over-bright locks ...*"

*Mine eyes have seen the glory of the coming of the Lord:  
He is trampling out the vintage where the grapes of wrath are stored;  
He hath loosed the fateful lightning of His terrible swift sword:*

*His truth is marching on.*

*Chorus:*

*Glory, glory, hallelujah !*

*Glory, glory, hallelujah !*

*Glory, glory, hallelujah !*

*His truth is marching on ...*

[Julia Ward Howe - Wikipedia, the free encyclopedia](#)

[Julia Ward Howe, 1819-1910, Vol. I.](#)



## Katharine Lee Bates

(b. 12 August 1859, Massachusetts - d. 28 March 1929, Massachusetts)

Poet/travel writer/children's book author - remembered as the author of the words to the anthem "America the Beautiful" (1895) - the music was composed by church organist & choirmaster Samuel A. Ward.

*O beautiful for spacious skies,  
For amber waves of grain,  
For purple mountain majesties  
Above the fruited plain !  
America ! America !  
God shed his grace on thee  
And crown thy good with brotherhood  
From sea to shining sea !...*

[America the Beautiful](#)

## Francis Scott Key

(b. 1 August 1779, Maryland - d. 11 January 11, 1843 Baltimore, Maryland)

American lawyer/author/ amateur poet - he wrote the words to the United States' national anthem, "The Star-Spangled Banner." Key's brother-in-law suggested he set the words to the tune 'To Anacreon in Heaven' - published in 1815.

*... Now it catches the gleam of the morning's first beam,  
In full glory reflected now shines in the stream:  
'Tis the star-spangled banner, O ! long may it wave  
O'er the land of the free & the home of the brave...*

[Francis Scott Key - Wikipedia, the free encyclopedia](#)

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